



DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

March 18, 2022

VIA Electronic Mail



RE: State Complaint No. 021 – 012 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On January 21, 2022, the State Complaint Office (SCO) of the Office of the State Superintendent of Education (OSSE), Division of Systems and Supports, K-12 received a State complaint from [REDACTED] (complainant) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of students with disabilities in a self-contained classroom [REDACTED], hereinafter “students” or “children.”

The complainant alleged that DCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300, specifically, failure to provide specialized education.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS failed to provide the specialized instruction required by the students’ IEPs. This Letter of Decision is the report of the final results of OSSE’s investigation.

COMPLAINT ISSUE

The allegations raised in the complaint, further clarified by a review of documents and interviews revealed in the course of the investigation, raised the following issues under the jurisdiction of the OSSE SCO:

1. **Requirement to provide special education at 34 CFR §300.323(c)(2)**
 - a. Failure to provide special education, specifically with regard to students in the independence and learning support (ILS) program [REDACTED] [REDACTED] without a permanent teacher or substitute teacher.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Manager of specialized instruction
2. Classroom aide

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS, or accessible via the Special Education Data System (SEDS):

- [REDACTED]
2. DCPS 2021-22 school year calendar
 3. Individualized education programs (IEPs) for eight ILS program students
 4. ILS classroom schedule and roster

GENERAL FINDINGS OF FACT

1. The students in this complaint are children with a disability as defined by 34 CFR §300.8.
2. The students' local educational agency (LEA) is DCPS.

ISSUE: SPECIAL EDUCATION SERVICES

DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide the specialized instruction required by the students' IEPs.

Pursuant to 34 CFR §300.323(c)(2), each public agency must ensure that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The complainant alleges that the special education teacher for the ILS classroom has been out on leave and there has not consistently been a substitute teacher in the classroom.

Findings of Fact and Discussion

DCPS ILS program classrooms are for students who have been identified as having a cognitive or intellectual disability. Each program teaches literacy and life skills to prepare students for employment and long-term independence. There are eight students [REDACTED] their IEPs require [REDACTED] hours of specialized instruction per week outside of the general education setting. The students are taught by a special education teacher who is assisted by a paraprofessional classroom aide. The ILS classroom teacher has been out [REDACTED]. When no substitute teacher was available, the classroom aide was left alone with the students to provide all specialized instruction and supports.

DCPS admits that there was no substitute teacher in the classroom [REDACTED]. The documentation provided by the manager of specialized instruction shows a substitute teacher was assigned to the classroom from [REDACTED]. The documentation lists only the classroom aide from [REDACTED]. Starting [REDACTED] a substitute teacher was again assigned to the classroom.

There were 33 school days when only the classroom aide was with the students. On the 28 school days when there was a substitute teacher assigned to the classroom, it was not a special education certified teacher. The investigation found minimal consultation support for specialized instruction provided to the substitute teacher and classroom aide: DCPS reported communication with the regular special education classroom teacher, but this occurred only at the start of the leave. There was no ongoing support provided by other special education teachers or administrators at the school. However, even if the consultation had been robust, it would not have been sufficient to make up for the lack of specialized instruction provided by a qualified special education teacher. Although it is acceptable for an LEA to provide specialized instruction in the general education setting through ongoing collaboration and co-planning between the special education teacher and the general education teachers to provide differentiated instruction and classroom accommodations, the students in the ILS classroom have IEPs that prescribe full-time specialized instruction outside of the general education setting. Without a special education teacher, this requirement is not met. In addition, no amount of consultation support can turn a classroom aide into a teacher because paraprofessionals do not have the same underlying qualifications as teachers. OSSE finds that DCPS has failed to provide the specialized instruction required by the students' IEPs for more than three months.

Therefore, DCPS has not complied with 34 CFR §300.323(c)(2).

CONCLUSION

1. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide the specialized instruction required by the students' IEPs.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must do the following:
 - a. Convene an IEP Team meeting for each of the students in the ILS classroom to create a compensatory education plan for its failure to provide the specialized instruction hours required by the student's IEP.
 - b. DCPS must submit copies of the compensatory education plans to OSSE, including the justification relied on by the IEP Teams in determining the compensatory education plan. Documentation of the completion of this item is due to OSSE within 60 days of the date of this letter.

All corrective actions must be completed by the date specified above, but in no case later than one year from the date of this letter. If you have any questions regarding this decision, please contact me at Kirstin.Hansen@dc.gov or 202-445-4893.

Sincerely,

Kirstin K Hansen

Kirstin Hansen
State Complaints Manager, Division of Systems and Supports, K-12

cc:

[REDACTED]